

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Port Arthur LNG, L.P.	Docket No. CP05-83-001
Port Arthur Pipeline, L.P.	Docket Nos. CP05-84-002 CP05-85-002 CP05-86-002

ORDER GRANTING REHEARING AND CLARIFICATION

(Issued November 20, 2006)

1. On July 19, 2006, Port Arthur LNG, L.P. (Port Arthur LNG) filed a request for rehearing and clarification of the order issued in these dockets on June 19, 2006.¹ The June 19 Order authorized Port Arthur LNG to site, construct, and operate a liquefied natural gas (LNG) terminal near Port Arthur, Texas and authorized Port Arthur Pipeline, L.P. (Port Arthur Pipeline)² to construct and operate two takeaway natural gas pipelines from the outlet of the proposed LNG terminal. All these facilities comprise the Port Arthur Project.

2. Port Arthur LNG seeks rehearing of the July 19, 2006 Order's requirements with respect to construction deadlines for the Port Arthur Project and seeks clarification of the number of ships that can access the terminal per year. For the reasons discussed below, we will grant the requests for rehearing and clarification.

Background

3. The June 19 Order authorized Port Arthur LNG under section 3 of the Natural Gas Act (NGA) to site, construct, and operate an LNG receiving terminal, an LNG storage

¹ *Port Arthur LNG, L.P.*, 115 FERC ¶ 61,344 (2006) (June 19 Order).

² Port Arthur LNG and Port Arthur Pipeline are indirect subsidiaries of Sempra Energy (Sempra).

and vaporization facility, and associated utilities, infrastructure and support systems (collectively, Terminal) near Port Arthur, Texas. The June 19 Order also authorized Port Arthur Pipeline to construct and operate two natural gas pipelines from the outlet of the proposed LNG terminal to an interconnection with the interstate facilities of Transcontinental Gas Pipe Line Corporation (Transco) in Beauregard Parish, Louisiana, and a pipeline from the outlet of the proposed LNG terminal to an interconnection with the interstate facilities of Natural Gas Pipeline Company of America (NGPL) in Jefferson County, Texas.

4. Port Arthur LNG proposed to construct the terminal facilities in two phases. Phase I involves, among other things, the construction of three LNG storage tanks and would permit the send out of 1.5 billion cubic feet per day (Bcf/d) of regasified LNG on a firm basis by the winter heating season of 2008-2009. Phase II involves, among other things, the construction of three additional LNG storage tanks and would permit the send out of an additional 1.5 Bcf/d of regasified LNG on a firm basis as early as 2010, but no later than 2015.

5. Similarly, Port Arthur Pipeline proposed to construct the associated pipeline facilities in two phases. In Phase I, Port Arthur Pipeline would construct a 36-inch diameter natural gas pipeline, extending 70 miles from the LNG terminal to an interconnection with Transco at its Compressor No. 45 in Beauregard Parish, Louisiana to be placed in service during the winter heating season of 2008-2009. In Phase II, the second leg, extending 3 miles from the LNG terminal to an interconnection with NGPL in Jefferson County, Texas, would be constructed and placed in service as early as 2010, but no later than 2015.

6. The July 19 Order requires that the Phase I facilities of both Port Arthur LNG and Port Arthur Pipeline be completed and placed in service within three years from the issue date of that order. The Phase II facilities are to be completed and placed in service within five years from the issue date of that order.³

Request for rehearing

7. On rehearing, Port Arthur LNG urges the Commission to modify the construction schedule by establishing a five-year construction and in-service deadline for the Phase I

³ Ordering Paragraph (E) of the July 19 Order states
Construction of Phase I facilities shall be completed and made available for service within three years from the date of this order and construction of Phase II facilities shall be completed and made available for service within five years from the date of this order in accordance with section 157.20(b) of the Commission's regulations.

facilities. The company requests that the construction and in-service deadline for Phase II facilities be extended three years beyond that, for a total eight-year construction schedule for both phases.

8. Port Arthur LNG argues that the currently effective construction and in-service deadlines do not provide enough time to adequately address permitting, construction, and market related issues. Further, obtaining the construction schedule modification now (as opposed to some later date, after filing an application for an amendment or a request for an extension of the deadline) will facilitate Port Arthur LNG's ongoing commercial negotiations and planning in the international arena.⁴

9. Port Arthur LNG states that it cannot meet the mandated timetables because certain non-jurisdictional construction (pipeline and highway relocation) must be completed before the construction site for the Phase I terminal facilities can be released. That nonjurisdictional activity, however, cannot commence until Port Arthur LNG receives all final environmental approvals and permits, some of which are still pending. Port Arthur LNG states that, as of July 19, 2006, a permit from the Army Corps of Engineers remains outstanding. Even after all permits and approvals are received, Port Arthur LNG indicates that it will take anywhere from 6 to 24 months to complete the non-jurisdictional projects before construction of the terminal facilities can commence. Once started, Port Arthur LNG states that actual construction of the Terminal will take approximately three years to complete. In sum, Port Arthur LNG contends that construction of the terminal facilities and related non-jurisdictional construction, will require anywhere from approximately 42 to 60 months. Further, Port Arthur LNG states that unforeseen delays associated with construction and environmental mitigation also must be factored into the time requirements.

10. Port Arthur LNG states that it is similarly situated to the LNG projects in *Cameron* and *Freeport* where the Commission authorized extensions of time for construction from three to five years.⁵ Port Arthur LNG notes that Port Arthur Pipeline likely could comply with the currently mandated period. However, Port Arthur LNG argues that the

⁴ Port Arthur LNG believes that the Commission routinely grants extensions of construction timetables and that Port Arthur LNG could defer its request to modify the timetable. However, Port Arthur LNG believes that it is more appropriate to modify the timetable at the outset to accommodate existing permitting delays and construction realities, both with respect to jurisdictional and non-jurisdictional facilities.

⁵ *Cameron LNG, LLC*, 104 FERC ¶ 61,269 at 61,887 (2003) (*Cameron*); *Freeport LNG Development, L.P.*, 107 FERC ¶ 61,278 (2004), *order on reh'g*, 108 FERC ¶ 61,253 at 62,403 (2004) (*Freeport*).

LNG terminal is the driver for the pipeline and it is only reasonable that the construction schedules for both aspects of the Port Arthur Project be coordinated.

Discussion

11. Port Arthur LNG has maintained since its earliest filings that construction of the terminal facilities could take longer than the five-year total time frame mandated by the July 19 Order. Port Arthur LNG's application and the Final Environmental Impact Statement (FEIS) both acknowledge that construction of the two phases of the Port Arthur Project may occur over a period of up to 10 years depending on, among other things, market conditions. In its comments on the Draft Environmental Impact Statement, Port Arthur LNG emphasized that "the timing of construction is dependent upon market demands and may occur over a period of up to 10 years to complete both phases."⁶ Similarly, in discussing the construction schedule, the FEIS recognized that market demand would determine the construction period for the Project.

12. As Port Arthur LNG points out, in *Cameron*, the Commission accepted the company's assertion that the minimum time frame for constructing the LNG terminal would be 37 months and that a buffer should be provided against unforeseen delays. In *Freeport*, the Commission was convinced that the company needed more than three years to meet pre-construction environmental mitigation conditions and an allowance for unforeseen delays. In both cases, the Commission granted rehearing and extended the initially imposed three-year construction deadline to five years.

13. As noted above, the Commission has previously granted requests to extend LNG facility construction requirements, from the initial order's three-year time frame, to five years, when properly supported.⁷ Moreover recently, in *Weaver's Cove*, the Commission set the initial time frame for construction of new LNG facilities at five years.⁸

14. Experience has shown that development of a successful LNG project requires the devotion of a significant amount of time and effort during both the pre- and post-authorization stages. Therefore, we will modify our July 19 Order to require that the Phase I facilities be constructed and placed in service within five years of the issuance of the original order in this proceeding. The Phase II facilities shall be constructed and

⁶ Port Arthur LNG Comments at 2 (citing to ES-1 and 2-19).

⁷ *Yukon Pacific Company, L.P.*, 107 FERC ¶ 61, 110 (2004) (*Yukon Pacific*). Yukon Pacific had twice previously sought three-year extensions which were granted by the Director, Office of Pipeline Regulation (Director).

⁸ *Weaver's Cove Energy, LLC*, 112 FERC ¶ 61,070 (2005) (*Weaver's Cove*).

placed in service within three years after that, or within eight years of the issuance date of the order.

Request for Clarification

15. The July 19 Order describes the LNG terminal as “a new marine terminal basin connected to the Port Arthur Channel that would include a ship maneuvering area and two protected berths to unload up to 180 ships per year during Phase I and up to 360 ships per year during Phase II with a ship capacity ranging from 125,000 m³ to 250,000 m³ of LNG.”⁹

16. Port Arthur LNG requests the Commission to clarify that the actual number of ships able to unload at the terminal will be dependent on the size of the ships calling on the terminal. Otherwise, Port Arthur LNG avers, it could be construed that Port Arthur LNG has an absolute limitation on the number of ships that may call on the Terminal -- 180 ships in Phase I and 360 ships in Phase II--regardless of the capacity of the LNG ships that arrive at Port Arthur. Port Arthur LNG believes that the reference to ship numbers should not be absolute but rather contingent on ship size. Port Arthur LNG points out that both Resource Report 1 and the FEIS expressly state that, “[t]he actual number of ships would be dependent on the size of the ships calling on the Terminal over time” and provide illustrations of how ship number and ship size interrelate.¹⁰

17. Port Arthur LNG is correct. The actual number of ships able to unload at the terminal is dependent on the size of the ships. The request for clarification is granted.

The Commission orders:

(A) The request for rehearing is granted. Construction of Phase I facilities shall be completed and made available for service before June 19, 2011, and construction of Phase II facilities shall be completed and made available for service before June 19, 2014, in accordance with section 157.20(b) of the Commission’s regulations.

⁹ July 19 Order P4.

¹⁰ FEIS, at 2-3; Resource Report 1 at 1-7. See also Resource Report 13 at 13-3.

(B) The request for clarification is granted as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.